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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on 12-7-2007

\+ CRL.M.C. 4930/2005

SHANKER LAL SHARDA & ANR ..... Petitioner
Through Mr. C.L. Gupta, Advocate

versus

THE STATE NCT OF DELHI & ANR ..... Respondent
Through Mr. Pawan Sharma, Advocate for the State.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT

1	Whether reporters of local papers may be allowed to see the judgment.?	yes
2.	To be referred to the Reporter or not?	yes
3.	Whether the judgment should be reported in the Digest?	yes

Mr. Justice S. Ravindra Bhat (Open Court)

1. The petitioner has sought for quashing of criminal proceedings. Such proceeding were filed by the respondent/complainants on allegations, *inter alia*, of the petitioner being guilty of offences under Section 138/141 of the Negotiable Instruments Act.

2. The complainant/respondent, M/s Phoenix International Finance Ltd. had alleged that M/s Chattar Extractions Ltd., of which the petitioner was the Chairman, had issued cheques dated 29.6.1998 bearing NO. 984314 for the sum of Rs. 3,04,964/- and 29.6.1998 bearing No.983335 for the sum of Rs. 63,436/-, respectively. It was alleged that upon presentation, these cheques were returned without being honoured. Legal notices were

issued by the complainant and on allegation that such notices were not complied with, the complaint was filed.

3. The Metropolitan Magistrate issued an order summoning the accused including the present petitioner in the proceedings.

4. It is alleged that the petitioner had, after being served, filed an application before the trial Court, for recall of the summoning order. However, that application was rejected on the ground that the power to recall the order did not lie with the trial Court.

5. The present petitions for quashing are premised on the ground that the accused company was directed to be wound up pursuant to recommendations of the Board of Industrial and Financial Reconstruction (BIFR). The recommendations of the Board were accepted by the Punjab & Haryana High Court, which on 11.12.97, issued a winding up order. It is contended on behalf of the petitioner that all the cheques were payable after the issuance of the winding up order and, therefore, there was no cause of action.

6. It is thus clear that the cause of action cannot accrue at any stage prior to the presentation and dishonour of the cheque. Complaint No. 98/2002 is based on cheques No, 984317 and 984338, both dated 29.03.99. The notice of demand in this case was sent on 21.04.99. The two cheques involved in complaint No. 99/2002 bear No. 984315 and 984336 and both cheques became payable on 29.9.98. The notice of demand was sent on 16.10.98. Similarly, in complaint No. 100/2002, the two cheques bearing No. 984312 and 984333 and both cheques bear the date 29.12.97. The notice of demand was sent on 14.1.98. The cheque which forms the basis of complaint No. 344/2003 bears No. 984334 and it became payable

on 29.3.98. The notice was sent on 06.08.98.

7. It would be seen that the cheques which are the subject matter of the four complaints, became payable on 29.12.97 or later. The drawer company was, however, wound up and official liquidator was appointed by the Hon'ble High Court of Punjab & Haryana in company petition No. 212 of 1997 vide order dated 11.12.97. The winding up order is reproduced below-

> *"The Board for Industrial and Financial Reconstruction has after making an inquiry under Section 16 of the Sick Industrial Companies (Special Provision) Act, 1985 recorded its opinion that it is just and equitable that M/s Chhatar Extraction Ltd. should be wound up. The said opinion has been forwarded to this Court for taking suitable action for winding up the company.*
>
> *In view of the aforesaid opinion of the Board the company M/s Chhatar Extraction Ltd. is ordered to be would up and the official liquidator attached to this Court is directed to forthwith take into his custody all properties and effects and the books and papers of the company. The official liquidator is further directed to advertise the notice of winding up order in one issue each of the 'Daily Jansatta' (Hindi) and 'Daily Tribune' (English) and also in the Punjab Government Gazette within fourteen days from today."*

8. The consequences of winding up order are given in Section 444 to 447 of the Companies Act. Section 445 (3) of Companies Act lays down as follows :-

> "*such order shall be deemed to be notice of discharge to the officers and employees of the company, except when the business of the company is continued."*

The term ' officer' is defined in Section 2 (30) of the Act and it includes any Director, Manager or Secretary, etc.

Section 456 of Companies Act provides as follows:

> "*456(1) Where a winding up order has been made or where*

a provisional liquidator has been appointed, the liquidator (or the provisional liquidator, as the case may be) shall take into his custody or under his control, all the property, effects and actionable claims to which the company is or appears to be entitled.

(2) All the property and effects of the company shall be deemed to be in the custody of the Court as from the date of the order for the winding up of the company."

9. The effect of the winding up order passed by the High Court of Punjab & Haryana on 11.12.97 was that all the property and effects of M/s Chhatar Extraction Ltd. came into custody of the Court with effect from that date. The winding up order also operated as notice of discharge to all the Directors including Shankar Lal Sharda, Madhu Sudan Sharda, Anil Kumar Sharda, Upinder Singh and S.R. Bansal. In other words, the accused company or its Directors could not have disposed of or otherwise dealt with any asset or effect after 11.12.97. It became impossible for them to ensure the encashment of the cheques which became payable after the date of winding up order.

*10.*Reliance has been placed by the complainant on *Rajiv Gupta -v- State* 2000 (2) JCC 485. In that case, Hon'ble Justice M.S. Siddiqui of Delhi High Court quoted the observations made by the apex Court in *Pankaj Mehra -v- State of Maharashtra* and held that a company and its Directors cannot escape from penal liability under Section 138 of Negotiable Instruments Act on the premise that petition for winding up of the company has been presented and was pending during the relevant time. The case before me is, however, not a case where a winding up petition was pending at the time of commission of offence. It had been disposed of and a winding up order had been actually passed before the accrual of cause of action. Therefore, the principle laid down in *Rajiv Gupta's* case will not apply.

11. On a plain reading of Section 138 of Negotiable Instruments Act, it is clear that a person incurs criminal liability only if the dishonour of the cheque can be attributed to an act or omission on his part. In the complaints before the Court, none of the accused persons could be held responsible for dishonour of the cheques because the assets of the company had already gone out of their hands before the cheques became payable. Therefore, in the circumstances of the cases, I am satisfied that the complaints were not maintainable. The petitions are accordingly allowed; the complaint and all further proceedings stand quashed.

S. RAVINDRA BHAT,J

JULY 12, 2007
as

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Decided on 12-7-2007

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1. The petitioner has sought for quashing of criminal proceedings. Such proceeding were filed by the respondent/complainants on allegations, *inter alia*, of the petitioner being guilty of offences under Section 138/141 of the Negotiable Instruments Act.
2. The complainant/respondent, M/s Phoenix International Finance Ltd. had alleged that M/s Chattar Extractions Ltd., of which the petitioner was the Chairman, had issued cheques dated 29.9.1999 bearing No. 984319 for the sum of Rs. 3,04,964/- and 29.9.1999 bearing No. 984340 for the sum of Rs. 63,436/-, respectively. It was alleged that upon presentation, these cheques were returned without being honoured. Legal notices were issued by the complainant and on allegation that such notices were not complied with, the

complaint was filed.

3. The Metropolitan Magistrate issued an order summoning the accused including the present petitioner in the proceedings.
4. It is alleged that the petitioner had, after being served, filed an application before the trial Court, for recall of the summoning order. However, that application was rejected on the ground that the power to recall the order did not lie with the trial Court.
5. The present petitions for quashing are premised on the ground that the accused company was directed to be wound up pursuant to recommendations of the Board of Industrial and Financial Reconstruction (BIFR). The recommendations of the Board were accepted by the Punjab & Haryana High Court, which on 11.12.97, issued a winding up order. It is contended on behalf of the petitioner that all the cheques were payable after the issuance of the winding up order and, therefore, there was no cause of action.
6. It is thus clear that the cause of action cannot accrue at any stage prior to the presentation and dishonour of the cheque. Complaint No. 98/2002 is based on cheques No, 984317 and 984338, both dated 29.03.99. The notice of demand in this case was sent on 21.04.99. The two cheques involved in complaint No. 99/2002 bear No. 984315 and 984336 and both cheques became payable on 29.9.98. The notice of demand was sent on 16.10.98. Similarly, in complaint No. 100/2002, the two cheques bearing No. 984312 and 984333 and both cheques bear the date 29.12.97. The notice of demand was sent on 14.1.98. The cheque which forms the basis of complaint No. 344/2003 bears No. 984334 and it became payable on 29.3.98. The notice was sent on 06.08.98.

7. It would be seen that the cheques which are the subject matter of the complaints, became payable on 29.12.97 or later. The drawer company was, however, wound up and official liquidator was appointed by the Hon'ble High Court of Punjab & Haryana in company

8. petition No. 212 of 1997 vide order dated 11.12.97. The winding up order is reproduced below :-

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> *In view of the aforesaid opinion of the Board the company M/s Chhatar Extraction Ltd. is ordered to be would up and the official liquidator attached to this Court is directed to forthwith take into his custody all properties and effects and the books and papers of the company. The official liquidator is further directed to advertise the notice of winding up order in one issue each of the 'Daily Jansatta' (Hindi) and 'Daily Tribune' (English) and also in the Punjab Government Gazette within fourteen days from today."*

8. The consequences of winding up order are given in Section 444 to 447 of the Companies Act. Section 445 (3) of Companies Act lays down as follows :-

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> *(2) All the property and effects of the company shall be deemed to be in the custody of the Court as from the date of the order for the winding up of the company."*

9. The effect of the winding up order passed by the High Court of Punjab & Haryana on

11.12.97 was that all the property and effects of M/s Chhatar Extraction Ltd. came into custody of the Court with effect from that date. The winding up order also operated as notice of discharge to all the Directors including Shankar Lal Sharda, Madhu Sudan Sharda, Anil Kumar Sharda, Upinder Singh and S.R. Bansal. In other words, the accused company or its Directors could not have disposed of or otherwise dealt with any asset or effect after 11.12.97. It became impossible for them to ensure the encashment of the cheques which became payable after the date of winding up order.

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